

Environmental Protection Agency

§ 260.42

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded.

[73 FR 64758, Oct. 30, 2008]

§ 260.40 Additional regulation of certain hazardous waste recycling activities on a case-by-case basis.

(a) The Regional Administrator may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in § 261.6(a)(2)(iii) of this chapter should be regulated under § 261.6 (b) and (c) of this chapter. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the Regional Administrator will consider the following factors:

(1) The types of materials accumulated or stored and the amounts accumulated or stored;

(2) The method of accumulation or storage;

(3) The length of time the materials have been accumulated or stored before being reclaimed;

(4) Whether any contaminants are being released into the environment, or are likely to be so released; and

(5) Other relevant factors.

(b) [Reserved]

The procedures for this decision are set forth in § 260.41 of this chapter.

[50 FR 662, Jan. 4, 1985, as amended at 71 FR 40258, July 14, 2006]

§ 260.41 Procedures for case-by-case regulation of hazardous waste recycling activities.

The Regional Administrator will use the following procedures when determining whether to regulate hazardous waste recycling activities described in § 261.6(a)(2)(iii) under the provisions of § 261.6 (b) and (c), rather than under the provisions of subpart F of part 266 of this chapter.

(a) If a generator is accumulating the waste, the Regional Administrator will issue a notice setting forth the factual basis for the decision and stating that

the person must comply with the applicable requirements of subparts A, C, D, and E of part 262 of this chapter. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the Regional Administrator will hold a public hearing. The Regional Administrator will provide notice of the hearing to the public and allow public participation at the hearing. The Regional Administrator will issue a final order after the hearing stating whether or not compliance with part 262 is required. The order becomes effective 30 days after service of the decision unless the Regional Administrator specifies a later date or unless review by the Administrator is requested. The order may be appealed to the Administrator by any person who participated in the public hearing. The Administrator may choose to grant or to deny the appeal. Final Agency action occurs when a final order is issued and Agency review procedures are exhausted.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of parts 270 and 124 of this chapter. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Regional Administrator's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Agency's determination. The question of whether the Regional Administrator's decision was proper will remain open for consideration during the public comment period discussed under § 124.11 of this chapter and in any subsequent hearing.

[50 FR 663, Jan. 4, 1985, as amended at 71 FR 40258, July 14, 2006]

§ 260.42 Notification requirement for hazardous secondary materials.

(a) Hazardous secondary material generators, tolling contractors, toll